SUPREME COURT, U. S.

JUN 7 1971

E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1694.

JOHN SANFIRA,

Petitioner,

vs.

NICK D. MOGA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

JOHN J. SIRIGAN,
1116 Standard Building,
Cleveland, Ohio,
Attorney for Respondent.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-0547

In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1094.

JOHN SANFIRA,

Petitioner,

vs.

NICK D. MOGA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

QUESTION PRESENTED.

Can the United States Government dictate to a person framing his last will and testament what the discretionary powers of a trustee under that will shall be?

REASONS FOR DENYING THE WRIT.

1. The decision of the Probate Court, subsequently affirmed by the Appellate Court of Ohio and denied review by the Ohio Supreme Court, is not contrary to public policy and in no wise has any effect in interpreting the public policy of the United States Government.

2. The beneficiary under the trust was never denied the funds to which he was entitled under the provisions of the trust.

3. The testamentary trust established under the will of the decedent was not created under the authority of any "Iron Curtain" Statutes.

4. The issues raised by the Petitioner are imaginary, invented for the sole purpose to induce this Court in error.

5. The Respondent never held any funds belonging to the Petitioner; consequently the authorities cited by the Petitioner, *Gorun v. Fall*, 393 U.S. 398, affirming the Court's ruling in the case of *Zschernig v. Miller*, 389 U.S. 429, are in no wise authority against the proposition that the exercising of discretion by a trustee violates the policy of the United States Government.

6. Upon a full and fair consideration of the evidence, the Probate Court found there was a bona fide trust established under the will of the decedent, George Sanfira, and that no impediment to the transfer of funds to a national of Romania has occurred. The Probate Court found and the review courts refused to change such a finding that, "*this is well within the right and the prerogative of any testator and it cannot be disturbed any more than any other discretionary right of a trustee properly set forth in the last will and testament of a decedent.*" (See Petitioner's Appendix A. Journal Entry) (Emphasis added).

7. Keeping in mind the previous rulings of this Court regarding the "Iron Curtain" Statutes, the Petitioner further wants to mislead this Court by misrepresenting the facts so that the decision of the lower courts appears to be of a political nature. A careful reading and a thorough comprehension of *Zschernig v. Miller*, *Gorun v. Fall*, *Mora v. Battin and Goldstein v. Cox*, 389 U.S. 581 will lead to the unescapable conclusion that the decisions in those cases are not dispositive of the legal issues herein.

CONCLUSION.

No constitutional issue can be raised by the Petitioner solely by quoting the cases decided by this Court under the "Iron Curtain" Statutes which in no way have any connection whatsoever in determining the right of a trustee to use his discretionary powers in terminating a trust.

The case at bar is simply one in which the Petitioner is dissatisfied with the manner of payment of the benefits due under the will of the decedent, disregarding completely the law of Ohio which gives a testator the right to dispose of his property as he sees fit and if he so desires to disinherit all his next of kin.

The decisions under the "Iron Curtain" Statutes were never intended to permit the United States Government to interfere with a testator in framing his last will and testament.

The Respondent maintains that the Petitioner's Writ of Certiorari should be denied.

Respectfully shubmitted,

JOHN J. SIBISAN,

Attorney for Respondent.